



State of Washington
DRAFT
REPORT OF EXAMINATION
FOR A WATER RIGHT

WR File NR S2-30570
WR Doc ID 4727458

PRIORITY DATE	WATER RIGHT NUMBER
March 29, 2011	S2-30570

MAILING ADDRESS	SITE ADDRESS (IF DIFFERENT)
PacifiCorp 825 NE Multnomah Portland OR 97232	PacifiCorp 105 Merwin Village Ct. Ariel, WA 98603

Total Quantity Authorized for Withdrawal or Diversion

WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AC-FT/YR)
8	CFS	5,792

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE			ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON- ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE	
Fish Passage (Non-consumptive)	8		CFS	5,792		01/01-12/31

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Cowlitz	N. Fork Lewis River	Columbia River	Lewis-27

SOURCE	PARCEL	WELL TAG	TOWNSHIP	RANGE	SECTION	QQ Q	LATITUDE	LONGITUDE
N. Fork Lewis River	508440101	NA	5N	1E	8	SWSW	45.926	122.721
N. Fork Lewis River	508440101	NA	5N	1E	7	SESE	45.926	122.721

Datum: NAD83/WGS84

Place of Use (See Attached Map)**PARCELS (NOT LISTED FOR SERVICE AREAS)**

508440101

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

SESE Section 7, T 5N, R 1E, and SWSW Section 8, T 5N, R 1E located in Cowlitz County.

Proposed Works

Water will be pumped from the Lewis River by an electric pump placed at the river's edge, with a screen to meet fisheries requirements. Water will be conveyed by a buried 12-inch diameter pipeline and distributed to four raceways approximately 50 feet long and 5 feet wide. Water will be returned by gravity flow through a 16-inch diameter return pipe that will also serve to release smolt into the river.

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
August 1, 2018	August 1, 2019	August 1, 2020

Measurement of Water Use

How often must water use be measured?	Monthly
How often must water use data be reported to Ecology?	Upon Request by Ecology
What rate should be reported?	Annual Peak Rate of Diversion (cfs)

Provisions***Measurements, Monitoring, Metering and Reporting***

An approved measuring device must be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173.

Department of Ecology personnel, upon presentation of proper credentials, must have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions.

WAC 173-173 describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Proof of Appropriation

The water right holder must file the notice of Proof of Appropriation of water (under which the certificate of water right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The certificate will reflect the extent of the project perfected within the limitations of the superseding permit. Elements of a proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

Schedule and Inspections

Department of Ecology personnel, upon presentation of proper credentials, will have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose of use is beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. S2-30570 subject to existing rights and the provisions specified above.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel RD SW, Ste 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

Signed at Lacey, Washington, this day of , 2016.

Michael J. Gallagher, Section Manager
Water Resources Program/Southwest Region
Department of Ecology

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.

INVESTIGATOR'S REPORT

Application for Water Right – PacifiCorp

Water Right Control Number S2-30570

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number S2-30570.

PacifiCorp of Portland, Oregon, filed water right application, S2-30570, for non-consumptive use for 8 cubic feet per second (cfs) with no specified annual quantity. The purpose of use is fish re-introduction and passage associated with three hydroelectric facilities on the North Fork of the Lewis River in Clark and Cowlitz Counties. The priority date of this application is March 29, 2011.

PacifiCorp renewed their licenses to operate its hydroelectric projects on the Lewis River. As part of the approval process, PacifiCorp committed to provide additional means for enhancing fish passage and fish habitat in the Lewis River Basin.

Table 1 Summary of Requested Water Right

Applicant Name:	PacifiCorp
Date of Application:	March 29, 2011
Place of Use	SESE Section 7 and SWSW Section 8, T. 5N, R. 1EWM

County	Waterbody	Tributary To	WRIA
Cowlitz	North Fork Lewis River	Columbia River	27-Lewis

Purpose	Rate	Unit	Ac-ft/yr	Begin Season	End Season
Fish passage	8	CFS	None specified	01/01	12/31

Source Name	Parcel	Well Tag	Twp	Rng	Sec	QQ Q	Latitude	Longitude
Lewis River	508440101	NA	5N	1E	7	SESE	45.926	-122.721
Lewis River	508440101	NA	5N	1E	8	SWSW	45.926	-122.721

Datum: NAD83/WGS84

CFS = Cubic Feet per Second; Sec. = Section; QQ Q = Quarter-quarter of a section; WRIA = Water Resource Inventory Area; E.W.M. = East of the Willamette Meridian

Cost Reimbursement

This application is being processed under a cost reimbursement agreement between the applicant and the Department of Ecology. This report has been prepared by HDR Engineering, Inc. (HDR) under Ecology Cost- Reimbursement Agreement No. HDR013 (Master Contract No. C1000189). The Work Assignment for this project was authorized by Ecology on August 18, 2015 for Application No. S2-30553 and amended on March 22, 2016 to add the subject Application No. S2-30570.

Legal Requirements for Approval of Appropriation of Water

Public Notice

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in the Daily News in Cowlitz

County on June 28, 2012 and July 30, 2012. No protests were received from either of these public notices.

Consultation with the Department of Fish and Wildlife

The Department must give notice to the Department of Fish and Wildlife (WDFW) of applications to divert, withdraw, or store water. Notice was given to Steve Boessow of WDFW by email on May 4, 2016, and a follow-up email on May 19. Mr. Boessow responded in a letter to Ecology dated June 6, 2016, stating WDFW did not oppose approval of this application.

State Environmental Policy Act (SEPA)

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions is met:

- It is a surface water right application for more than 1 cfs, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cfs, so long as that irrigation project will not receive public subsidies;
- It is a groundwater right application for more than 2,250 gallons per minute;
- It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

This application is for a total of 8 cfs with no specified annual quantity for non-consumptive water use for fish passage facilities. Since this request exceeds the threshold that triggers SEPA, an Environmental Checklist, dated June 23, 2011 was prepared by PacifiCorp. The City of Woodland issued a revised Mitigated Determination of Non-Significance (MDNS) on October 14, 2011. No further SEPA action was taken.

INVESTIGATION

Site Visit

A site investigation was conducted on May 2, 2016 by Jerry Louthain of HDR. Frank Shrier of PacifiCorp provided a tour of the project area. The project site is approximately 8-acres in size and is undeveloped. The property mostly consists of a fairly level grassy field that slightly slopes to the river. The North Fork Lewis River is the east boundary of the property and the Lewis River Road (SR503) forms the west boundary of the property. The property is approximately 1,100 feet long and 300 feet wide.

Although the requested water use is non-consumptive, there is a very short bypass reach approximately 200 feet long. There are no intervening water uses between the point of diversion and the return flow point.

In reviewing the application package, it was found that the Parcel Number for the Place of Use was shown on the application as Parcel Number 508440100; however, the correct Parcel Number is 508440101. This discrepancy was pointed out to PacifiCorp and they confirmed that the correct Parcel Number is 508440101. A parcel number was not identified in the legal notice, so the legal notice is correct.

Proposed Use and Basis of Water Demand

The purpose of this project is to provide a release area for anadromous salmon and steelhead smolt captured in the fish collectors in Swift, Yale, and Merwin reservoirs. The smolt are taken from the fish collectors and transported by truck to four raceways approximately 50 feet long and 5 feet wide. Water is pumped from the North Fork Lewis River and is circulated into the raceways, where the smolt are held for a maximum of 24 hours. Water will be returned by gravity flow through a 16-inch diameter pipe that will also serve to release smolt into the river.

Water will be pumped from the river by an electric pump placed at the river's edge, with a screen to meet fisheries requirements. Water will be conveyed by a buried 12-inch diameter pipeline and distributed to the raceways.

The applicant has determined that a pumped rate of 8 cfs will provide sufficient flow through the pipelines and for circulation water in the raceways to maintain the health of the smolt until they are released into the river before they head downstream and back to the ocean for rearing. This amounts to roughly 5,792 ac-ft per year.

Other Rights Appurtenant to the Place of Use

There are no other water rights appurtenant to the place of use.

ANALYSIS

Under Washington State law, the following four criteria must be met for an application to be approved:

- There must be no impairment of existing rights
- Water must be available
- The water use must be beneficial
- The water use must not be detrimental to the public interest

Impairment Considerations

Impairment is an adverse impact on the physical availability of water for a beneficial use that is entitled to protection. A water right application may not be approved if it would:

- Interrupt or interfere with the availability of water at the authorized point of diversion of a surface water right. A surface water right conditioned with instream flows may be impaired if a proposed use or change would cause the flow of the stream to fall to or below the instream flow more frequently or for a longer duration than was previously the case.
- Interrupt or interfere with the flow of water allocated by rule, water rights, or court decree to instream flows.
- Degrade the water quality of the source to the point that the water is unsuitable for beneficial use by existing users (e.g., via sea water intrusion).

Approval of this application would result in no impairment of any prior existing water rights, downstream water uses, or regulated surface water. Water is pumped from the river at a location approximately 200 feet upstream of where it is all returned to the river with no intervening water use.

Water Availability

For water to be available for appropriation, it must be both physically and legally available.

Physical Availability

For water to be physically available water must be present in quantities and quality and on a sufficiently frequent basis to provide a reasonably reliable source for the requested beneficial use. In addition, the following factors are considered:

- Volume of water represented by senior water rights, including federal or tribal reserved rights or claims;
- Water right claims registered under Chapter 90.14 RCW;
- Ground water uses established in accordance with Chapter 90.44 RCW, including those that are exempt from the requirement to obtain a permit; and
- Potential riparian water rights, including non-diversionary stock water.
- Lack of data indicating water usage can also be a consideration in determining water availability, if the department cannot ascertain the extent to which existing rights are consistently utilized and cannot affirmatively find that water is available for further appropriation.

The requested rate of diversion of water is physically available.

Legal Availability

To determine whether water is legally available for appropriation, the following factors are considered:

- Regional water management plans – which may specifically close certain water bodies to further appropriation.
- Existing rights – which may already appropriate physically available water.
- Fisheries and other instream uses (e.g., recreation and navigation). Instream needs, including instream and base flows set by regulation. Water is not available for out of stream uses where further reducing the flow level of surface water would be detrimental to existing fishery resources.

Ecology has adopted Chapter 173-527 WAC Water Resources Management Program for the Lewis River, WRIA 27, which includes establishing minimum instream flows and closures. WAC 173-527-080 allows for new surface water uses if they are consistent with the surface and groundwater statutes and other applicable requirements of law and if the proposed use is non-consumptive.

The requested rate of diversion of water is non-consumptive, with the exception of the short by-pass reach, and the use is consistent with regional water management plans. This proposed use will not impair existing water rights or regulated water. Water is legally available.

Beneficial Use

The proposed use of water is defined in statute as a beneficial use (RCW 90.54.020(1))

Fish passage is included in this definition as a beneficial use of water.

Public Interest Considerations

Approval of this application is not considered to be detrimental to the public interest.

Conclusions

The conclusions based on the above investigation are as follows:

1. The proposed appropriation for fish passage is a beneficial use of water.
2. The recommended quantity is available for appropriation.
3. This appropriation will not impair senior water rights.
4. This new appropriation is not detrimental to the public welfare.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a water right be approved in the amounts and within the limitations listed below and subject to the provisions listed above.

Purpose of Use and Authorized Quantities

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

8 cfs (non-consumptive) and 5,792 acre-feet per year.

Fish passage

Point of Diversion

Within the SE¼SE¼ Section 7 and SW¼SW¼, Section 8, Township 5 North, Range 1E.W.M.

Place of Use

Parcel Number 508440101 within the SE¼SE¼ Section 7 and SW¼SW¼, Section 8, Township 5 North, Range 1E.W.M.

Jerry Louthain

Date

If you need this publication in an alternate format, please call Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

Selected References

ATTACHMENT 1- PACIFICORP WATER RIGHT APPLICATION NO. S2-30570

